

Exhibit A

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF MASSACHUSETTS

3 * * * * *

4 DAVID BOLTON, JR.
Plaintiff

5 VERSUS

CA-99-12202-DPW

6
7 STEPHEN TAYLOR AND
SCOTT GREANY,
8 INDIVIDUALLY AND AS POLICE
OFFICERS OF THE CITY OF
9 NEW BEDFORD, MASSACHUSETTS
Defendants

* * * * *

10 BEFORE THE HONORABLE DOUGLAS P. WOODLOCK

11 UNITED STATES DISTRICT COURT JUDGE

12 JURY TRIAL - DAY FOUR

13 AUGUST 16, 2001

14 APPEARANCES:

15 KATHLEEN J. WOOD, ESQ., 385 Court Street,
16 P.O. Box 6445, Plymouth, Massachusetts 02362,
on behalf of the Plaintiff

17 JOSEPH L. TEHAN, JR., ESQ. AND JONATHAN M.
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19 02116, on behalf of the Defendants

20 Courtroom No. 1 - 3rd Floor
1 Courthouse Way
21 Boston, Massachusetts 02210
9:00 A.M. - 5:00 P.M.

22 Pamela R. Owens - Official Court Reporter
23 John Joseph Moakley District Courthouse
1 Courthouse Way - Suite 3200
24 Boston, Massachusetts 02210

25 Method of Reporting: Computer-Aided Transcription

1 COURT'S CHARGE TO JURY

2 BY THE COURT:

3 Ladies and gentlemen, now that you've heard
4 all of the evidence in the case and you've heard the
5 arguments of counsel, it becomes my obligation to
6 instruct you on the law. One thing I've noticed -- I
7 think counsel have noticed as well -- is that you've
8 been paying very careful attention -- close attention --
9 to the evidence as it came in. And I hope that
10 you'll pay the same kind of careful attention to my
11 instructions because this is the point at which our
12 respective responsibilities become clear.

13 The obligation of counsel is to bring to
14 your attention the evidence that they consider to be
15 relevant. And they have done so and done so, I think,
16 rather effectively. My obligation is throughout the
17 trial to try to give you the rules under which you're
18 going to operate. And then you go into the jury room
19 all by yourself. Nobody is going to second-guess what
20 you do. We trust you to decide this case on the basis
21 of the evidence itself and the law that I give you. And
22 this is a case, I suspect, which challenges some of your
23 instincts. It's brought to your attention aspects of
24 life in New Bedford that perhaps you weren't familiar
25 with and perhaps you find unsettling, language that

1 maybe the coarsening of modern life has made us familiar
2 with, but nevertheless is unsettling, activities that
3 one doesn't particularly care for. But what you have to
4 do is discipline yourself to ask what is truly relevant
5 here.

6 And what is truly relevant here is the
7 question of whether or not the police exceeded their
8 authority. Police are not vested with the right to
9 punish someone. They are not vested with the right to
10 pull someone over willy-nilly even if that someone
11 ultimately is convicted of a crime or consorts with a
12 prostitute or uses dirty language. What this case
13 requires you to do and what we are counting on you to do
14 is exercise a disciplined, fair, nuanced evaluation of
15 the evidence in the case.

16 Was evidence of prostitution relevant? Of
17 course it was relevant for certain issues and we'll talk
18 about that. Was dirty language relevant? Well, that's
19 what people say was said. So, that's relevant. Was
20 conviction of a crime relevant? Yes, it happened. And
21 you have to accept the judgment of the state court. But
22 you're going to have to go beyond those facts to address
23 the underlying set of circumstances.

24 Behind me there is a little statue. You have
25 probably seen statues like that even on the top of

1 courthouses. It's a statue of a woman. She's got a
2 sword in one hand; she's got scales in the other; and
3 she's got a blindfold on. It's pretty easy to see why
4 she's got a sword in one hand. She's there to enforce
5 the law. It's pretty easy to see why she's got scales
6 in her hand. She's there to weigh the evidence. But
7 why does she have a blindfold on? She has a blindfold
8 on because she is disciplining herself from being
9 distracted from those things that would unfairly
10 prejudice a nuanced evaluation of the case.

11 Now, you will understand that during the
12 course of a trial, I have to make rulings. Sometimes
13 when there are good lawyers, as there were here, I
14 can do it in a relatively peremptory way. You will
15 understand that in a trial, witnesses get emotional.
16 The parties get emotional. And when that happens and it
17 seems to interfere with the orderly presentation of the
18 evidence, I'll give admonitions. But you're going to
19 put that all out of your mind. It's not a suggestion by
20 me that I've ruled against one party or the other on the
21 ultimate issues that you have to decide. It's simply
22 part of my responsibility to shape the trial in an
23 orderly and fair fashion.

24 During the course of closing argument, from
25 time to time, you heard lawyers say "I believe."

1 Well, in the course of closing argument, people get
2 wound up. Lawyers get wound up. They're not supposed
3 to say "I believe. " They are here as advocates. And,
4 so, you'll put that out of your mind as well. You're
5 focused -- as we all must be focused -- on the evidence
6 itself, not what a lawyer believes or doesn't believe
7 or says they believe or don't believe. Because you're
8 going to focus on the evidence.

9 Now, what is the evidence? I told you from
10 the beginning that the evidence was going to be
11 principally the witnesses and that you'd have to size
12 these witnesses up. And I suspect that it has struck
13 you, as it struck me, that this is a complex set of
14 circumstances, fast moving with lots of apparent
15 contradictions. I want you to step back from that just
16 a bit and recognize that we're involved in a human
17 enterprise, human beings trying to recall after a very
18 long period of time what precisely happened in a very
19 compressed period of time. Your responsibility
20 ultimately is to imaginatively re-create what happened
21 so that you can evaluate what it was that occurred that
22 morning in New Bedford.

23 There was a description of the encounter, the
24 tussle -- I'm trying to use a neutral term so that you
25 won't draw some conclusion that I have a view on this

1 which I emphasize I do not. But I forget which of the
2 officers it was who referred to it as a pig pile. Well,
3 untangling a pig pile is what you're going to have to
4 do. And you're going to have to do it by asking
5 yourselves "How much can I believe the witnesses?" You
6 have the right to believe everything that a witness tells
7 you, nothing a witness tells you, or perhaps something
8 in-between, bits and pieces of what a witness tells you.
9 You'll have in mind the circumstances that might affect
10 recollection. If you're involved in a pig pile, how
11 clear is your recollection going to be? You'll
12 understand that from time to time people's recollections
13 are impaired. Ms. Swain this morning made reference to
14 whether or not she had been high when she had been
15 interviewed by the Internal Affairs Division. And
16 you'll take that into consideration. You'll take into
17 consideration that people are pretty excited during
18 these kinds of encounters and you will evaluate that in
19 terms of deciding whether or not the recollections that
20 are presented to you fairly and accurately give you a
21 sense on which you can rely in imaginatively re-creating
22 these circumstances.

23 There have been references to inconsistencies.
24 And I don't think I'm taking a position to say that
25 among various of the witnesses, there have been

1 inconsistencies, inconsistencies between what they said
2 on a previous occasion and what they said now. But it's
3 not enough simply to establish an inconsistency. You
4 have to view it as a tool and how do you use it as a
5 tool. Well, you ask yourself, "Does this make a
6 difference?" How would an inconsistency make a
7 difference? Well, it would make a difference if you
8 said, "This person said one thing on one occasion, he
9 said something on another occasion, I can't believe
10 anything that they said." Or maybe you've had the
11 experience that others have had where you go home to
12 the dinner table and people are having a conversation
13 about seeing the same event and one person says that it
14 happened one way and one person says that it happened
15 another way. Neither one of them is lying. And they're
16 just illustrating how fragile recollection is and how
17 difficult ascertaining the truth is. And, so, you are
18 going to evaluate in a nuanced way the inconsistencies,
19 which you may find, among the witnesses and among the
20 testimony of various witnesses to reach your conclusion
21 about what happened in this case.

22 I am always embarrassed to try to instruct
23 juries on how they evaluate witnesses. You do it
24 every day. Every day, somebody is trying to sell you
25 something. You size them up and you say, "Does this

1 person seem to know what they're talking about? Does
2 this person have some kind of a bias? Does this person
3 have an ability to communicate what's going on? Is this
4 person reliable?" That's why we have juries. Because
5 you have a range of life experience that can do in
6 practice what I'm trying to articulate in these
7 instructions. And you're going to do it here and
8 you're going to do it in connection with some fairly
9 interesting sets of facts.

10 You have other tools quite apart from the
11 testimony of witnesses. You've got some pictures. Now,
12 you may also have had the experience that I have of
13 someone like my Aunt Mabel who believed that there was
14 never a camera that could fully capture her appearance.
15 You may have the view that reducing three dimensions
16 into two dimensions is problematic. You may have the
17 view that Dr. Green expressed, that a chart didn't show
18 the depth and the musculature and so on. Well, okay.
19 So those are the limitations. But they're tools. And,
20 so, you'll look at the photographs to get a sense of
21 what the area was like. You'll look at the photographs
22 to get a sense of what the injuries were like. And
23 you'll apply that same kind of common sense, that
24 nuanced evaluation, to those photographs that you apply
25 to the direct testimony of the witnesses. You've got

1 writings, documents, and the St. Luke's medical
2 records. And you will walk through how you read medical
3 records or at least how Dr. Green reads medical records.
4 And you'll read those in the same way that you evaluate
5 the testimony of witnesses. That is, those records
6 reflect somebody saying something. And you have to ask
7 yourself how reliable was the person who was saying that
8 thing that's reflected in the record. You'll have the
9 report, the initial report that was made by Mr. Bolton,
10 and you'll look at that. And you'll ask yourself,
11 as you ask yourself in connection with all of the
12 suggestions of inconsistencies, whether or not when it
13 was made, it was at a time when the events were really
14 fresh, whether or not he was able to express himself
15 well, whether or not he left out things that should have
16 been put in, that you would expect to have been put in
17 that have been testified to here. You will ask that
18 same question regarding the references to police reports
19 that have been offered. You'll remember the line of
20 examination of the officers regarding leaving things in
21 police reports, taking things out of police reports, is
22 the police report complete, and you'll consider that as
23 well.

24 There were references to compensation for
25 Dr. Green. And you'll consider that as well. You'll

1 recognize that professionals get paid for their time.
2 And the real issue for you is whether or not the
3 payment that they received has somehow influenced their
4 testimony in a fashion that makes it less than fully
5 credible, that makes them a partisan for one side or the
6 other. The idea of compensation is the same as the idea
7 of bias. Do cops stick together and testify for each
8 other? Does a wife support her husband? Now, there's
9 nothing wrong with any of those. But they suggest that
10 you're going to be on point in carefully regarding and
11 carefully evaluating what those people have to say.
12 You have these conflicting views. You have these
13 photographs. You have statements. That's the form of
14 the evidence. But let me ask you to step back a bit.

15 Lawyers and judges frequently speak about
16 evidence as falling into two basic categories: Direct
17 evidence and circumstantial evidence.

18 Now, direct evidence is pretty easy to
19 understand. Direct evidence is some witness comes in
20 here and says "I saw him punch him in the nose."
21 That's direct evidence.

22 Circumstantial evidence is a little more
23 difficult to explain, although you understand it
24 implicitly. It's common sense. It's what logicians
25 call inferences. It works something like this. Let's

1 assume that several months from now, you go to bed at
2 night. You look out on your front lawn and it's
3 clear. And you are fortunate enough to go to bed at 10
4 o'clock. You wake up the next morning. You look out
5 the window. It's still clear. And then you look down
6 and you see there's snow all over the ground. Now,
7 the way I set this up is you didn't see any snow at
8 10 o'clock last night and you didn't see it snow as you
9 looked out the window, but you see snow on the ground.
10 Well, circumstantial evidence means that you can draw
11 the conclusions from the various observations that you
12 made that it snowed between 10:00 and 8:00. That's
13 common sense. And maybe you can go farther. Maybe
14 you can look at your front lawn and say "There are
15 footprints in the snow. Somebody must have been
16 wandering around on my front lawn between 10:00 and
17 8:00." And maybe you can look at the footprints and
18 say, "It must have been a man, look at the size of those
19 footprints." Well, now we're getting into some judgment
20 areas, I would suggest to you. You know, in an era in
21 which teenage girls go to their proms in Doc Martins,
22 maybe you can't draw conclusions about the size of
23 footprints and the gender of the person who is in them.
24 But that's for you. That's for you applying your common
25 sense. And this case, while it has a series of direct

1 evidence observations, also involves circumstantial
2 evidence, following the footprints to see where they
3 lead. You look at the injuries. You say, "what do they
4 consist of, what do they stand for, what conclusions
5 do we draw?" And you're going to take all of that
6 evidence together, consider all of that evidence, not
7 disregard any of the evidence, follow the instructions
8 that I've given you about certain things not being
9 available for proving the truth of the matter, but just
10 for purposes of establishing whether or not someone
11 has been less than candid. And you're going to draw
12 your own conclusions. Draw your own conclusions with
13 respect to what?

14 Well, Ms. Greenberg is going to pass to you
15 the verdict slip that was referenced in the closing
16 arguments so that we can walk through and you can see
17 what it is that we want from you.

18 As frequently happens in cases, it gets
19 sweated down for jury purposes to a series of questions.
20 That way, I don't have to spend a lot of time with you
21 talking about the specific legal references and that
22 sort of thing.

23 But let's start with the basic proposition.
24 The basic proposition is that the burden rests with
25 Mr. Bolton. Mr. Bolton has to satisfy you by what we

1 call a fair preponderance of the evidence regarding each
2 of the propositions that you'll see here. Now, some of
3 you may be familiar with the standard in criminal cases.
4 That's proof beyond a reasonable doubt. It's a very
5 heavy standard. That's not the standard that's applied
6 here. The standard that's applied here is is it more
7 likely true than not true? By a fair preponderance of
8 the evidence, is it more likely true than not true that
9 the propositions for which Mr. Bolton is contending are
10 the case? And they are crystallized in these questions.

11 On the first page are three questions that
12 deal with the substantive law, what we call liability.
13 And just stepping back a bit without getting into a
14 lengthy discussion of constitutional rights, let me tell
15 you that what we're dealing with here is the question
16 of whether or not there has been a deprivation of
17 Mr. Bolton's constitutional rights to be free from
18 unreasonable seizures. That's governed generally by
19 the 4th Amendment to the Constitution and the parallel
20 provision of the Massachusetts State Constitution.
21 And the basic proposition -- I'll be more specific as we
22 go along. But the basic proposition is this: In this
23 country, we have made a very fundamental choice. And
24 the very fundamental choice is people are allowed to
25 conduct their business without being bothered by the

1 police, intruded upon by the police. But we recognize
2 that there are competing considerations, considerations
3 that are necessary if we're going to have an orderly
4 society. And, so, what the Constitution basically says
5 is that reasonable seizures and reasonable arrests are
6 appropriate, and the police may use reasonable force to
7 effect an appropriate arrest.

8 Now, I talked about arrest. An arrest is a
9 formal undertaking requiring probable cause by the
10 police officers. And we're not focused on whether or
11 not they have probable cause. That's been established
12 in connection with the guilty findings of disorderly
13 conduct and the more specific finding with respect to
14 assault and battery on Officer Greany. We're concerned
15 with a somewhat lesser intrusion that the law permits.
16 This lesser intrusion is what people have been referring
17 to as a traffic stop. And what the law says is that
18 a police officer who is acting on a reasonable and
19 articulable -- that means you can explain it --
20 suspicion of criminal activity has the right briefly to
21 detain an individual in order to confirm or dispel that
22 suspicion. You're familiar with it probably yourselves
23 with traffic stops. That's the traditional one. A
24 cop pulls you over. You're not free to go. You're
25 detained. But it has to be on the basis of some sort of

1 reasonable suspicion of criminal activity. And it
2 doesn't have to be serious criminal activity. It can be
3 a misdemeanor. It can be a traffic violation. But they
4 have the right to do that. That's the balance that we
5 have struck -- the Constitution has struck -- for
6 certain kinds of encounters. Now, here, the question
7 that you're asking yourself is did Officer Taylor stop
8 Mr. Bolton without reasonable suspicion that Mr. Bolton
9 may have engaged in unlawful activity? Mr. Bolton has
10 to satisfy it's more likely true than not true that when
11 Officer Taylor stopped him -- that traffic stop -- he
12 didn't have reasonable suspicion that Mr. Bolton had
13 engaged in unlawful activity.

14 Well, what's been suggested to you? Suggested
15 to you as a traffic violation is squealing tires. And
16 it is the case that in Massachusetts, as in most states,
17 it is a violation of the Massachusetts motor vehicle law
18 to operate a motor vehicle so as to make a harsh,
19 objectionable or unreasonable noise. Police have the
20 authority to make a stop for that. They also have the
21 authority to make a stop for being involved with a
22 person in connection with sex for hire. Both sides of
23 the transaction are committing a crime. They have a
24 right to stop in connection with reasonable suspicion
25 of drug activity. The purpose of this stop as a

1 minimal intrusion is, as I said, to conduct a further
2 investigation. And it's a price that we've chosen to
3 pay for an orderly society against the backdrop of
4 requiring the police only to do so reasonably. So, this
5 question asks you "yes" or "no," "Did Officer Taylor
6 stop Mr. Bolton without reasonable suspicion that Mr.
7 Bolton may have engaged in unlawful activity?"

8 Then we move on to the circumstance of what we
9 call excessive force. This is the point of arrest, a
10 much more serious intrusion. That is, taking someone
11 before a neutral Magistrate to determine whether or not
12 they have committed a crime or should be held for a
13 crime. Police officers don't have this empty authority
14 to arrest. They have the right to use such force as is
15 necessary to effect the arrest. If somebody is saying,
16 "I don't want to be arrested," they can use whatever
17 force is necessary and appropriate under the
18 circumstances to effect that arrest. The police
19 officers may have that right, but they don't have the
20 right to punish someone, to take it out on someone.
21 They have the right to enforce the law, but they don't
22 have the right to engage in their own punishment. And
23 that's what's involved in excessive force. They have
24 the right to arrest and secure and develop the evidence.
25 But punishment and the evaluation -- ultimate evaluation

1 -- of the evidence is a matter for the courts. And as
2 a consequence, a person, even if he's been lawfully
3 arrested or detained -- and here you will understand
4 that they were privileged to arrest Mr. Bolton in
5 connection with any disturbance that he was engaged in.
6 And it has been established that he was convicted of
7 disorderly conduct and he was convicted of assault and
8 battery on a police officer. They are entitled to
9 take such force as a reasonable person would think is
10 required to take one arrested into custody or to
11 effectuate a lawful stop. And that includes the
12 physical force that's necessary to subdue a person who
13 is struggling with the officer. But that doesn't mean
14 you get to use any force. I suppose you could subdue
15 somebody by shooting them in the knee caps. That would
16 be excessive force under these circumstances. It has to
17 be measured.

18 Now, I think it was Mr. Tehan in his closing
19 argument who made reference to a long-standing
20 formulation that the Judges have used to describe what
21 goes on and what the law reflects in this area. That is
22 that when you're evaluating excessive force, not every
23 push or shove that may in the quiet of some judge's
24 chambers or in the hopefully orderly setting of a
25 courtroom is going to be viewed as rising to the level

1 of a constitutional violation.

2 The law recognizes that police officers who
3 are making an arrest, attempting to secure a person for
4 purposes of taking him into custody are often forced to
5 make split-second decisions about the amount of force
6 that's needed to effect an arrest. And they are
7 operating frequently in circumstances that may be tense,
8 may be potentially dangerous, and are rapidly changing.
9 And, so, you're going to have to evaluate this with a
10 certain degree of practical sense. We're talking about
11 reasonable. It's not truly a bright line. But you're
12 going to ask yourself what were the circumstances that
13 Officer Taylor and Officer Greany were confronting.
14 What was reasonably necessary to effect that arrest to
15 take Mr. Bolton into custody? While they may not use
16 greater force than is necessary to do that, you will
17 recognize, as the law does, that making an arrest can be
18 a tough operation under less than ideal conditions. And
19 you'll ask yourself whether or not what they did here
20 has been shown to have been unreasonable. Because,
21 again, the burden rests with Mr. Bolton to satisfy you
22 that they used unreasonably excessive force in effecting
23 his arrest. And there's a separate question, obviously,
24 for Officer Taylor and for Officer Greany, because
25 you're going to have to consider the case with respect

1 to them separately and evaluate the case with respect
2 to them separately. And merely because you may find
3 that one of them engaged in excessive force does not
4 necessarily mean that you've found that the other one
5 has.

6 Now, we turn to the next page and we're
7 turning to the question of damage. And I want to say
8 that what I've tried to do in this set of questions in
9 consultation with the attorneys is to capture all of the
10 things that may be resolved by you. But I've also given
11 you instructions when you reach certain questions. And
12 I'm assuming that you've found, although I'm not
13 instructing you to do it -- but I'm assuming that you've
14 found that there has been an answer of "yes" to question
15 number (1) -- that is, Mr. Bolton has met his burden of
16 showing that he was detained without reasonable
17 suspicion. And, so, here we're asking you to tell us
18 what are the damages involved? Now, this is not an
19 exercise in double-entry bookkeeping. We don't have a
20 scale that we can give you to say this amount of time
21 equals this amount of money. In fact, we're looking at
22 you as the common conscience of the community to tell us
23 what value, if any, you put on what harm, if any, you
24 find that Mr. Bolton suffered. And in this first
25 question on the second page -- that is, question number

1 (4) -- which deals with whether or not there was harm as
2 a result of an illegal traffic stop, I'm really focused
3 on that period before what we've called the tussle with
4 the use of force took place. And you'll ask yourself
5 what's the value of the constitutional right here. Was
6 Mr. Bolton subjected to a form of dignitary harm because
7 he was pulled over in a public area? And you heard him
8 talk about how he felt under these circumstances.

9 Now, one of the things the law recognizes is
10 that certain constitutional rights are abstract. You
11 know, what's the value of the 1st Amendment right?
12 Can you reduce that to a dollar figure? Well, sometimes
13 it's hard. And, so, this question is asking you (a) are
14 there compensatory damages -- that is, damages that are
15 necessary to put Mr. Bolton in the position that he
16 would have been in if he hadn't been pulled over. But
17 even if you don't find compensatory damages, you can
18 still find nominal damages. And the way ordinarily
19 juries find nominal damages is that they say one dollar.
20 That's not to diminish the importance of the
21 constitutional right. It's just simply a way of saying
22 it's hard to say how much this is worth, we can't
23 say how much it's worth. It's a violation of the
24 constitutional right and it has to be vindicated. And
25 the way we do that is we say one dollar is appropriate.

1 Now, you're asking yourself in these damage
2 areas whether or not there was physical harm, whether
3 or not there was physical pain, but you're also asking
4 yourself whether or not there was harm to a person's
5 sense of dignity. It's harder to evaluate because you
6 don't have the larger sense of some physical pain that
7 continues. But it's things like humiliation or mental
8 anguish or matters that interfere with the ordinary
9 conduct of your life, fear of the police thereafter.
10 Those are things that you can consider in making your
11 judgment about what the proper damages -- if you get
12 to this point and you find that there was harm that
13 was visited upon Mr. Bolton as a result of some
14 constitutional violation -- were.

15 The second question on this page, which is
16 question number (5), is again a question that you only
17 get to if you've answered "yes" to either questions (2)
18 or (3). Questions (2) and (3), you remember, are the
19 specific questions as to excessive force by Officer
20 Greany or Officer Taylor. And, again, you're asking
21 yourself what kind of damages should be awarded.
22 There's a suggestion that there was an interference with
23 Mr. Bolton's life. There was pain that Mr. Bolton
24 testified about. And you'll have to evaluate whether
25 or not you believe it and, if so, whether or not it's

1 compensable and can be reduced to money. Again, you
2 will consider the question of humiliation, humiliation
3 in the face of his family as a result of this. Those
4 are the kinds of things that you are entitled to
5 evaluate in making a dollar figure here, or "none" if
6 you choose to do that, or "one dollar" if you say "I
7 can't make a determination, but there was harm, his
8 constitutional rights were violated."

9 Now, that takes us, then, to the third page.
10 And the third page deals with something that we call
11 punitive damages. You'll notice on the -- one thing I
12 do want to say with respect to question number (5) is
13 while we're talking about whether or not excessive force
14 was used by either Officer Taylor or Officer Greany,
15 question (5) doesn't split up the damages between the
16 two. And the reason for that is that I've made a legal
17 determination that you can't distinguish the damage
18 here. They are jointly and severally liable if they're
19 liable at all here. So it's a single damage figure for
20 the excessive force if you find that.

21 Question (5) is what we call punitive damages.
22 The question really asks you whether or not either or
23 both of these individual defendants acted in a way that
24 was willful or deliberate or malicious or with reckless
25 disregard of Mr. Bolton's constitutional rights. The

1 issue is: Is it serious enough to require not just
2 compensation, but punishment? It's an unusual form of
3 damage in the law. The Commonwealth of Massachusetts,
4 as a matter of fact, doesn't have punitive damages
5 really for anything other than wrongful death. But
6 under the Federal Civil Rights laws, there are punitive
7 damages because the law has made a determination that an
8 individual citizen bringing an individual civil rights
9 claim has a right to have a jury decide whether or not
10 by the award of some money, a message can be sent.
11 That message is a specific deterrent to the individuals
12 involved -- Officer Greany, Officer Taylor or, more
13 generally, to police officers -- that if you engage
14 in this kind of thing and you do it willfully or
15 deliberately or maliciously or with reckless disregard
16 of someone's constitutional rights, then you're going to
17 be subject to punitive damages, a fine effectively, a
18 fine that you have to determine in your evaluation of
19 whether or not -- and, if so, to what degree -- the
20 actions of Officer Taylor and Officer Greany were
21 deserving of punitive damages, whether or not and to
22 what degree they were willful or they were deliberate or
23 they were malicious or they were with reckless disregard
24 of his constitutional rights in connection with the
25 excessive force claim.

1 I have given you, as I said, all of the
2 questions that we need answered in order to take this to
3 a final resolution. The questions are in the order that
4 I expect that you'll walk through. And I want you to
5 follow those directions very carefully. If, for
6 example, you answer "no" to questions (1), (2) and (3),
7 you'll see you return the verdict at that point.

8 However, you have got to follow those damage
9 questions if you answered "yes" as to any of (1), (2) or
10 (3). You have to follow those damage questions through.
11 And I hope the road map tells you how to deal with that.

12 Now, before I go any further, I'll see
13 counsel at the side bar.

14 (Beginning of side bar conference)

15 THE COURT: Ms. Wood, anything further?

16 MS. WOOD: No, Your Honor.

17 MR. SILVERSTEIN: Your Honor, on request
18 number 24, I asked for an instruction that a minor
19 injury is insufficient to support an inference that a
20 police officer used inordinate force to effect an
21 arrest.

22 THE COURT: No, I didn't give that.

23 MR. TEHAN: Thank you. Judge, first, for the
24 record, I confirm that our motion for judgment at the
25 conclusion of the plaintiff's case was indeed filed and

1 denied?

2 THE COURT: Yes.

3 MR. TEHAN: Thank you, Judge. I have just a
4 couple of points to make, Your Honor. It was something
5 I raised after the plaintiff's counsel closed. It
6 was the issue of the substantive use of the tape for
7 impeachment purposes. Forgive me, but I don't recall if
8 I mentioned that or not.

9 The other aspect was I respectfully object to
10 the statement that the plaintiff might be compensated
11 for mental anguish, fear of police, or facing the family.
12 In the absence of any testimony in that regard and
13 indeed no contradiction of that testimony, he was not
14 emotionally distressed.

15 THE COURT: No. I decline to say that.

16 I'll give them an instruction on how they
17 conduct their business.

18 (End of side bar conference)

19 BY THE COURT:

20 Let me turn now to the question of how you
21 conduct your business. And these are suggestions, since
22 I'm not going to be in the jury room. You're going to
23 have to decide among yourselves how you organize your
24 deliberations.

25 The whole purpose of jury deliberations is to

1 permit a full and civil and careful discussion of all of
2 the evidence. It's to ensure that everybody gets a
3 chance to participate, that everybody hears what
4 everybody else has to say, and has the opportunity to
5 offer their own views. My experience is that a way of
6 doing that is simply to sit down at the table and go
7 around and have each person kind of say what evidence
8 was particularly important to them. Don't take a straw
9 vote at the beginning. At least that's my suggestion.
10 One of the problems with a straw vote is that people
11 take a position and then they're there to defend the
12 position rather than kind of working it out because what
13 you're involved in is a collective effort at collective
14 recollection. You want the benefit of what the other 11
15 of you have to say about this. And, so, a useful way,
16 at least in my experience, is to kind of begin with a
17 discussion of the things that seemed to you to be most
18 pertinent. And what you'll find is that somebody will
19 mention something and that will prompt further
20 recollection, enrich the recollection. Now, I warn you
21 the experience that many juries have had, that that
22 person who was sitting next to you and seemed fairly
23 reasonable might start expressing rather unreasonable
24 views. That's part of the jury process. You'll be
25 familiar with it from cocktail parties, I suspect.

1 But the idea is together to work this out because your
2 verdict has to be unanimous on any of the questions that
3 you're required to answer. It requires that everybody
4 listen to what the other fellow has to say and be
5 prepared to reconsider your own views. That doesn't
6 mean you give up your views, but you're open to fair
7 consideration of what the other person has to say.

8 It is necessary for there to be a foreperson.
9 And Ms. Arrigo, after a nationwide search, in light of
10 the fact that you're sitting in seat number one, you
11 have now become the foreperson of the jury. And I want
12 you to understand there's no extra money involved in
13 this. The purpose, however, is simply that somebody has
14 to sit there to make sure the people aren't talking over
15 each other and it moves around in an orderly fashion.
16 It's also the case that it's necessary for someone to
17 communicate with the Court if you have questions. My
18 hope is that the instructions have been clear enough,
19 that you won't have any questions. But if you have any
20 questions about the substance of this case, they should
21 be in writing signed by Ms. Arrigo or, if she declines
22 to sign, signed by one of the jurors. You give them to
23 the court officer who is going to be outside the jury
24 room or Ms. Greenberg who may be outside the jury room
25 as well. And I'm going to share them with counsel.

1 We'll talk through how we respond to it. But anything
2 that's substantive about the case, give it to us in
3 writing. One thing you shouldn't do, don't tell us
4 where you stand. At some point, you will take a vote.
5 And maybe at that time, you'll be seven to five on some
6 issue. Don't tell us. We're not entitled to know.
7 You're going to have to keep the development of your
8 jury deliberations to yourselves. But if you have
9 particular questions, as I say, about particular issues
10 -- not that I'm soliciting questions -- the way to do it
11 is to do it in writing.

12 Now, creature comfort things like "when do we
13 eat," that can be addressed to Ms. Greenberg or the
14 court officer outside, although I can answer that
15 question. It was at 12:30. We've run a little longer,
16 but they're not taking the food away. But it was
17 supposed to be at 12:30. But, presumably, the food
18 will be in there when you go in. And probably the best
19 thing is to eat lunch and then start your deliberations
20 in the case.

21 When you've reached your final verdict and
22 you're prepared to come back into court and you've
23 answered all the questions that you're required to
24 answer in connection with this, then tell the court
25 officer or Ms. Greenberg and we'll arrange to bring you

1 in. At some point, if you haven't concluded your
2 deliberations by, say, 4:30 or so today, I'll probably
3 ask Ms. Greenberg just to go in and inquire whether or
4 not you want to stay later because we have to make
5 arrangements if you do. But don't worry about that as
6 yet.

7 Is there anything else that we need from
8 counsel?

9 MS. WOOD: No, Your Honor.

10 MR. TEHAN: No, thank you, Your Honor.

11 THE COURT: Okay. So you'll retire to the
12 jury room. Ms. Greenberg will gather together the bits
13 and pieces of evidence after consultation with the
14 lawyers and you can have lunch and begin your
15 deliberations. Good luck.

16 (Jury out at 12:50 P.M.)

17 THE COURT: Five-minute rule. You've got to
18 be available in five minutes or things will happen in
19 your absence.

20 MR. TEHAN: Yes, Your Honor.

21 THE COURT: Okay. Anything else?

22 MR. TEHAN: No.

23 MS. WOOD: Thank you.

24 THE COURT: You're held harmless, anyway, for
25 30 minutes for lunch yourselves.

1 RECESSED AT 12:52 P.M.

2 (Reconvened at 2:05 P.M.)

3 THE COURT: Well, I believe Ms. Greenberg has
4 shared with you what we've marked as Jury Exhibit Number
5 1 which reads, "We, the jury, need to know whether Judge
6 Woodlock has in his instructions declared that it was
7 reasonable suspicion to pull someone over for being
8 seen with a prostitute under the law. Could we see
9 the transcript of the Judge's instruction regarding
10 that matter?"

11 Well, the full transcript hasn't been
12 prepared. So, I think what I'll do is bring the jury
13 back in and instruct them about reasonable suspicion
14 again. Okay?

15 MS. WOOD: Yes, Your Honor.

16 (Jury in at 2:07 P.M.)

17 THE COURT: Ladies and gentlemen, I have your
18 inquiry which I'll read back to you and I have marked as
19 Jury Exhibit 1.

20 It reads: "We, the jury, need to know whether
21 Judge Woodlock in his instructions declared that it was
22 reasonable suspicion to pull someone over for being seen
23 with a prostitute under the law? Could we see the
24 transcript of the Judge's instructions regarding that
25 matter?"

1 As I think I indicated to you at the outset,
2 the transcript simply isn't going to be available to
3 you. It's too difficult to get cranked up in the time
4 that we have to do the transcript for you. There's a
5 second issue that I want to emphasize to you. You will
6 want to listen to all of the instructions, take into
7 consideration all of the instructions, and don't want to
8 focus on particular instructions to the exclusion or
9 perhaps have you distracted from considering all of the
10 instructions.

11 Nevertheless, let me answer orally this
12 question of reasonable suspicion. Under the 4th
13 Amendment of the United States Constitution, law
14 enforcement officials are authorized to initiate some
15 sort of investigatory detention (a stop) only if they
16 have reasonable articulable suspicion of criminal
17 activity. To meet that standard, the Government or
18 the law enforcement officers must point to specific and
19 articulable facts together with rational inferences
20 drawn from those facts that reasonably suggest that
21 criminal activity has occurred or is imminent. Hunches
22 and generalized suspicions are insufficient. So, the
23 primary bases are the police officers' observations,
24 the knowledge of police officers with respect to the
25 context, and considerable deferences afforded to such

1 observations and conclusions as the police may make.
2 The assumption is that experienced officers can infer
3 criminal activity from conduct that may seem innocuous
4 to a lay observer. But, of course, an officer may not
5 base a reasonable suspicion on some isolated instances
6 of innocent activity.

7 Now, your specific question asked whether or
8 not it was a reasonable suspicion to pull someone over
9 for being seen with a prostitute under the law. You
10 should understand that the crime that is at issue here
11 is sex for hire. It's not being seen with a prostitute.
12 It's sex for hire. Nevertheless, being seen with a
13 prostitute may under certain circumstances give rise to
14 a reasonable suspicion that sex for hire has taken
15 place. To use two extreme examples, merely because
16 someone sits next to a prostitute at a Sunday mass and
17 consequently is seen with her is not enough to give rise
18 to a reasonable suspicion. By contrast, coming out of a
19 building that's labeled "Bordello" in the company of a
20 known prostitute might give rise to a reasonable
21 suspicion. The question for you is whether or not
22 there was a reasonable suspicion that criminal activity
23 may have occurred sufficient to justify a brief
24 investigatory detention.

25 I hope that answers the question for you. And

1 I'll ask you to go back and continue your deliberations.

2 (Jury out at 2:10 P.M.)

3 THE COURT: Anything else?

4 MR. TEHAN: No.

5 MS. WOOD: No.

6 THE COURT: Okay.

7 RECESSED AT 2:10 P.M.

8 THE COURT: Well, we're informed we have a
9 verdict. So, I'll have the jury brought in.

10 (Jury in at 4:50 P.M.)

11 THE COURT: Madam Foreperson, has the jury
12 reached a unanimous verdict?

13 FOREPERSON: Yes, we have, Your Honor.

14 THE COURT: Then Ms. Greenberg will inquire.

15 THE CLERK: Madam Foreperson, Members of the
16 Jury, harken to your verdict as the Court has recorded
17 it. Civil Action No. 99-12202-DPW, David Bolton versus
18 Stephen Taylor and Scott Greany.

19 Question (1): Did Officer Taylor stop Mr.
20 Bolton without reasonable suspicion that Mr. Bolton may
21 have engaged in unlawful activity? Answer: Yes.

22 Question (2): Did Officer Taylor use
23 unreasonably excessive force in effecting Mr. Bolton's
24 arrest? Answer: No.

25 Question (3): Did Officer Greany use

1 unreasonably excessive force in effecting the arrest of
2 Mr. Bolton? Answer: No.

3 Question (4): What amount, if any, do you
4 find would fairly compensate Mr. Bolton for any harm he
5 suffered as a result of the traffic stop by Officer
6 Taylor without regard to any harm suffered as a result
7 of the force used thereafter to effect his arrest?
8 Answer: \$175,000.

9 Signed and dated this August 16th, 2001.

10 So say you, Madam Foreperson, and say you
11 Members of the Jury?

12 REPORTER'S NOTE: (All jurors responded in
13 the affirmative).

14 THE COURT: Anything further from counsel?

15 MR. TEHAN: No, Your Honor.

16 MS. WOOD: No, Your Honor.

17 THE COURT: Well, ladies and gentlemen, what
18 that means is that your jury service is concluded. As I
19 told you throughout, it is your verdict, not mine. And,
20 so, it would be improper for me to comment on the
21 substance of your verdict. But I can comment -- as I
22 did in the closing argument and in my instructions --
23 concerning the way in which you went about your
24 business. It was clear to all of us that you were
25 paying very careful attention to the evidence as it came

1 in, asked a pertinent question during the course of your
2 deliberations, addressed yourself to the issues in the
3 way in which the issues need to be addressed. That's
4 what we look for from a jury and I believe that that's
5 what we received from you.

6 So, on behalf of the Court and I believe on
7 behalf of the parties, I want to thank you for your jury
8 service here. I want to offer you some advice, no
9 longer instructions, but just advice.

10 In this judicial circuit, no party or
11 representative of a party may contact a juror after the
12 verdict is returned. This isn't the kind of case in
13 which that would happen. And the only way it could
14 happen is with the approval of the Court, and this isn't
15 the kind of case in which I'm going to give approval for
16 that sort of thing. The reason for that rule is that
17 you've been engaged in a confidential discussion.
18 And the courts see no reason to burden that with the
19 prospect that somebody is going to be asking you what
20 happened during the course of your deliberations. I
21 no longer can tell you not to talk to anybody. It's
22 absolutely up to you. But I make one specific
23 observation in this regard. You have undoubtedly shared
24 with each other your views about the credibility of
25 various witnesses, what you think about the various

1 witnesses, what you think about the evidence in the
2 case. And it may occur to you that you wouldn't want to
3 have somebody else characterize what you said in a
4 confidential setting. And if you wouldn't want to have
5 someone else characterize what you said, then you
6 probably don't want to characterize what your colleagues
7 said. It's up to you, but I encourage you to maintain
8 the confidentiality of your jury service. Beyond that,
9 I can't give you any more instructions except to thank
10 you for your service and you're free to go. Have a good
11 evening.

12 (Jury out at 4:55 P.M.)

13 THE COURT: Ms. Greenberg reminds me to be
14 sure that you take back your own exhibits.

15 I anticipate an extensive post trial
16 motion practice with respect to this verdict which has
17 some proportionality problems in terms of the damages
18 that the jury returned. So, let's set a schedule to
19 deal with that. Post trial motions, Mr. Tehan, when?

20 MR. TEHAN: Your Honor, I've only got the 10
21 days, don't I? Can you extend that?

22 THE COURT: No. You can file the motion, the
23 bare bones motion, and brief it after this.

24 MR. TEHAN: I've done two trials in two weeks,
25 Judge. I wanted to take the next week off.

1 THE COURT: Just tell me when you want to
2 address this question.

3 MR. TEHAN: Well, let's push on the envelope.
4 Can I have a month and work back from there if that's a
5 problem?

6 THE COURT: Yes, you can. So, I'm talking
7 about September 14. Is that sufficient?

8 MR. TEHAN: Can we do that?

9 MR. SILVERSTEIN: Yes.

10 THE COURT: Okay. But you better file a bare
11 bones motion within the 10 days indicating a memorandum
12 to follow.

13 MR. TEHAN: This is my 59 motion.

14 THE COURT: Yes. I mean, the issue, as far as
15 I can see, is going to be one of potential remittitur.

16 MR. TEHAN: A lot of money. Thanks, Judge.

17 THE COURT: Ms. Wood, it's a remarkable amount
18 of money for the claim of a violation of a terry stop.

19 MS. WOOD: Well, I think what they're having a
20 problem with is that there's a pattern of this. That's
21 what they're saying the message is.

22 THE COURT: Well, perhaps, except that no
23 money was awarded for punitive damages. And punitive
24 damages wasn't submitted to them on this count.

25 But in any event, I just raise it. I think

1 you would both benefit from talking amongst yourselves.

2 MR. TEHAN: Right, Judge.

3 THE COURT: And, Ms. Wood, when would you want
4 to respond to that motion. I've gone to the 14th.

5 MS. WOOD: How many days do we get -- 30?

6 THE COURT: No, you don't ordinarily. But if
7 that's what you think you need --

8 MS. WOOD: No.

9 THE COURT: -- then tell me. Ordinarily, it's
10 a two-week process.

11 MS. WOOD: Okay, 14.

12 THE COURT: Okay. So response by the 28th.

13 MS. WOOD: Okay.

14 THE COURT: Okay.

15 MR. TEHAN: Thank you, Judge.

16 THE COURT: Thank you very much. We'll be in
17 recess.

18 MS. WOOD: Thank you, Your Honor.

19 RECESSED AT 5:00 P.M.

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C E R T I F I C A T E

I, PAMELA R. OWENS, Official Court Reporter,
U. S. District Court, do hereby certify that the
foregoing is a true and correct transcription of the
proceedings taken down by me in machine shorthand and
transcribed by same.

Pamela R. Owens 12/27/05